IN THE HIGH COURT OF JUDICATURE AT BOMBAY

IN ITS INSOLVENCY JURISDICTION

Notice of Motion No.197 of 2004

In

Notice No.N/57 of 2004

Dhirajlal H. Vora ..Debtors

Exparte

M/s Marine Container Services (I) Pvt. Ltd.

and Ors. ...Judgment Creditor

Mrs Cyprus Ardeshir i/b M/s Bilawala and Co.f or Judgment Creditor

Mr.D.B.Parekh i/b Jayant H. Pol for Judgment Debtor

CORAM:DR.D.Y.CHANDRACHUD,J.

1st February 2005

P.C.:-

1. This motion is for setting aside an Insolvency Notice dated 2-4-2004 which is served on the Judgment Debtor on 19-8-2004. Summary Suit NO.3844 of 1999 was instituted against the Judgment Debtor for recovery of an amount of Rs.4.70 crores on a guarantee dated 17-5-1997 which is executed in favour of four companies. A summons for judgment

was taken out in the Summary Suit in which the Judgment Debtor filed a reply dated 1-2-2002. On 4-2-2002 D.G.Karnik J granted conditional leave to defend the suit subject to the deposit of a sum of Rs.1.25 crores within a period of eight weeks. One of the companies in respect of which the guarantee has been executed was before the BIFR and hence, the order of deposit did not cover the claim in respect of the guarantee executed in respect of the dues of the BIFR company. The Company before BIFR is Risabh Precision Bearings Ltd. The deposit was not made. On 7-8-2002 the Summary Suit was hence placed before S.J.Vajifdar J and a decree was passed in the amount of Rs.2.65 crores (as corrected by a subsequent order of 28-8-2002). The Insolvency notice is based exclusively on the decree that was passed by this Court in the aforesaid terms which does not include the amount which is due and payable by the BIFR company.

2. It appears that the reference which was filed before BIFR by Ms Risabh Precision Bearings Ltd. was dismissed by an order dated 23-12-2003 of the BIFR. Thereupon by an order dated 26-3-2004 the Summary Suit was decreed by A.M.Khanwilkar, J for the balance of the claim. In the affidavit in support of the Notice of Motion it has been stated that M/s Risabh Precision Bearings Ltd. has filed an appeal before the AAIFR. This will not affect

the tenability of the Insolvency notice since the Insolvency Notice is founded on the decree of this Court dated 7-8-2002 which as already noted earlier is only confined to the amount which is due under a guarantee in respect of companies which are not admittedly before the BIER in proceedings under the SICA.

. In this view of the matter there is no merit in the motion which is accordingly rejected.

(DR.D.Y.CHANDRACHUD,J.)